

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DOCKET NO:

COLLETTE BRIGHTMAN,
Plaintiff,

v.

J.C. PENNEY, INC.,
Defendant.

MAGISTRATE JUDGE

05 CV 11718 RGS**NOTICE OF REMOVAL TO
UNITED STATES ~~FEDERAL~~ DISTRICT COURT****AMOUNT \$ *66362*****SUMMONS ISSUED *NA*****LOCAL RULE 4.1 */*****WAIVER FORM */*****MCF ISSUED */*****BY DPTY. CLK. *M.P.*****DATE *8/18/2005*****TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Please take notice, pursuant to 28 U.S.C. Section 1446, that the defendant as named above, J.C. Penney, Inc. (so-called), properly named as J.C. Penney Corporation, Inc., respectfully petitions this Court for removal of the above-captioned action, from the Bristol County Superior Court (Bristol Superior Court) of the Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts. The grounds for removal are as follows:

1. On or about July 11, 2005, the above plaintiff filed a Complaint against the above defendant, J.C. Penney, Inc., in the Commonwealth of Massachusetts, Bristol Superior Court, captioned Collette Brightman v. J.C. Penney, Inc., Civil Action Number BRCV2005-00753. A true and accurate copy of said Summons and Complaint is attached hereto as Exhibit "A." Plaintiff served a copy of her Summons and Complaint upon J.C. Penney Corporation, Inc., mis-named in the Complaint as J.C. Penney, Inc., on July 21, 2005.¹

¹In filing this Notice of Removal, the defendant does not waive any defenses with regard to service of process or the adequacy of process.

2. This civil action is pending in Bristol County Massachusetts, and accordingly, under 28 U.S.C. §§101 and 1441(a), the United States District Court for the District of Massachusetts is the proper forum for removal.

3. The present action is a civil action in which this Court has diversity jurisdiction pursuant to 28 U.S.C. §1332, and may be removed to this Court pursuant to 28 U.S.C. §1446.

4. Although the plaintiff has stated as damages an amount less than \$75,000 in her state court "Civil Action Cover Sheet," attached hereto as Exhibit "B," wherein plaintiff itemizes certain medical expenses totaling \$14,782.06, it is the defendant's position in seeking removal herein that the amount in controversy would indeed exceed \$75,000, based upon the nature of plaintiff's personal injury claims. See e.g. DeAguilar v. Boeing Co., 47 F. 3d 1404, 1411-12 (5th Cir. 1995). Therefore, plaintiff states that the amount in controversy does meet the statutory requirement.

5. Based upon the allegations in plaintiff's Complaint, the plaintiff is a resident of the Commonwealth of Massachusetts, Bristol County.

6. Plaintiff alleges that the defendant, J.C. Penney, is a corporation with a usual place of business in Dartmouth, Bristol County, Massachusetts. While a J.C. Penney retail store is located at such location, the defendant (misnamed in the Complaint), states that J.C. Penney Corporation, Inc., the defendant as properly named, is a Delaware Corporation with its principal place of business located at 6501 Legacy Drive, Plano, Texas.

7. The defendant, as properly named J.C. Penney Corporation, Inc., is neither a resident of the Commonwealth of Massachusetts nor has a principal place of business in Massachusetts.

8. This Notice of Removal has been filed within thirty (30) days of service of the Complaint upon the defendant, and thus has been filed in a timely manner pursuant to U.S.C. §1446.

9. Because complete diversity of citizenship exists between plaintiff and defendant, and as defendant takes the position that the amount in controversy in this action exceeds the sum of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), removal is proper pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1446.

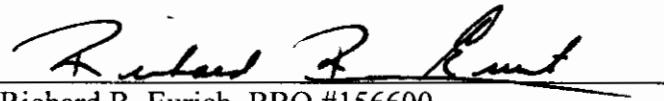
10. Written notice of this motion will be given to the plaintiff promptly after the filing of this motion.

11. The defendant will file a notice of the filing of this Notice of Removal and a copy of this Notice of Removal with the Clerk of the Superior Court of Bristol County for the Commonwealth of Massachusetts.

12. Pursuant to Local Rule 81.1(A), the defendant shall request of the Clerk of the Bristol County Superior Court, certified or attested copies of all records and proceedings in the state court and certified or attested copies of all docket entries therein, and shall file the same with this Court within thirty (30) days after the filing of this Notice of Removal.

WHEREFORE, for the foregoing reasons, the defendant J.C. Penney Corporation, Inc., misnamed in the Complaint as J.C. Penney, Inc., respectfully requests that the above-captioned matter pending in the Superior Court of Bristol County, Massachusetts be removed and that this Court take jurisdiction for trial and determination.

The Defendant,
J.C. Penney Corporation, Inc., misnamed as J.C.
Penney, Inc.
By its attorneys,



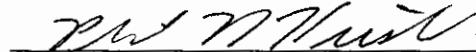
Richard R. Eurich, BBO #156600
Philip M. Hirshberg, BBO #567234
MORRISON MAHONEY, LLP
250 Summer Street
Boston, MA 02210-1181
(617) 439-7500

Dated: 8/18/05

CERTIFICATE OF SERVICE

I, Philip M. Hirshberg, do hereby certify that I have, this date, served the foregoing document, by certified mail, return receipt requested to Stephen J. Amaral, Joseph P. Harrington, P.C., 190 William Street, New Bedford, MA 02740.

Dated: August 18, 2005



Richard R. Eurich, BBO #156600
Philip M. Hirshberg, BBO#567234
MORRISON MAHONEY, LLP
250 Summer Street
Boston, MA 02210
(617) 439-7500

Form #42

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPT. OF THE TRIAL COURT
CIVIL ACTION
No. 05-753

[SEAL]

COLLETTE BRIGHTMAN

, Plaintiff(s)

Y₁

JC PENNEY, INC.

, Defendant(s)

(TO PLAINTIFF'S ATTORNEY:

PLEASE INDICATE TYPE OF ACTION INVOLVED :—

TORT — MOTOR VEHICLE FACTOR DOOR CONTRACTOR —

POLYU-WW-CE-TRK-Easy-Open-Box

SUMMONS

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve uponJoseph P. Harrington

plaintiff's attorney, whose address is 190 William Street, New Bedford, Ma., 02740,
an answer to the complaint which is herewith served upon you, within (20) days after
service of this summons upon you, exclusive of the day of service. If you fail to do so,
judgment by default will be taken against you for the relief demanded in the complaint.
You are also required to file your answer to the complaint in the office of the Clerk of this
Court at New Bedford either before service upon plaintiff's attorney or within a
reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

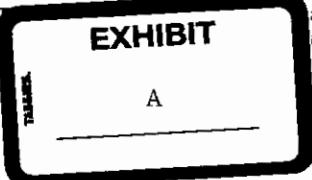
Witness, Hon. Suzanne V. Del Vecchio, Adm. Justice of the Superior Court Dept. of the Trial Court, at Taunton, the 13th day of July, in the year of our Lord two thousand and five.

A TRUE ALTERED COPY

Magistrate

NOTES. ~~BROOKLYN COUNTY DEPUTY SHERIFF~~

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the name of each defendant appears in the caption. If a separate summons is used for each defendant, the particular defendant to be inserted is 60 days.
3. If the Commonwealth or an officer of agency thereto



COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT
DOCKET NO.

COLLETTE BRIGHTMAN,
Plaintiff

VS.

COMPLAINT

JC PENNEY, INC.,
Defendant

1. Your Plaintiff is Collette Brightman, 55 Reservior Road, Acushnet, MA 02743.

2. Your Defendant is JC Penney, Inc., a corporation with a usual place of business in Dartmouth, Bristol County, Massachusetts.

3. On February 23, 2004, the Defendant was in control of a store located in the North Dartmouth Mall in Dartmouth, Bristol County, Massachusetts.

4. On the same date, the Plaintiff was lawfully upon the premises controlled by the Defendant.

5. The Defendant so negligently and carelessly permitted shelving, which was being moved by the Defendants, its agents, servants, employees to remain in the aisle, without any warning or guards, so that the premises were dangerous and unsafe for customers therein, including the Plaintiff.

6. As a result thereof, the Plaintiff was caused to trip and fall, sustain serious injuries, suffered great pain of body and mind, and was obliged to expend money for her medical care and treatment.

WHEREFORE, Plaintiff demands Judgment against the Defendant for her damages and costs.

LAW OFFICE OF
JOSEPH P. HARRINGTON,

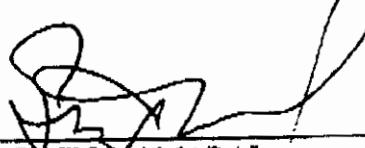
P.C.
190 WILLIAM STREET
NEW BEDFORD, MASS
02740-6095

(508) 996-6765

Respectfully Submitted,
Collette Brightman, Plaintiff
By Her Attorney,

JOSEPH P. HARRINGTON, P.C.

By:


STEPHEN T. AMARAL

190 William Street
New Bedford, MA 02740
(508) 996-6765
July 7, 2005
BBO # 017000

LAW OFFICE OF
JOSEPH P. HARRINGTON,
P.C.
190 WILLIAM STREET
NEW BEDFORD, MASS
02740-6095

(508) 996-6765

CIVIL ACTION COVER SHEET		DOCKET NO(S)	Trial Court of Massachusetts Superior Court Department
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PLAINTIFF(S)	Collette Brightman 55 Reservoir Road Acushnet, MA 02743	DEFENDANT(S)
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE	Stephen J. Amaral Joseph P. Harrington, PC 190 William St., New Bedford, MA 02740 Board of Bar Overseers number: 017000	ATTORNEY (if

Origin code and track designator

Place an x in one box only:

1. F01 Original Complaint 4.
 2. F02 Removal to Sup.Ct. C.231,s.104 5.
(Before trial) (F)
 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X) 6

TYPE OF ACTION AND TRACK DESIGNATOR

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS
B20	Personal Injury- Slip & Fall	(F)	(x) Yes () No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(Attach additional sheets as necessary)

A. Documented medical expenses to date:

1. Total hospital expenses	\$ 6,598.11
2. Total Doctor expenses	\$ 5,566.00
3. Total chiropractic expenses	\$
4. Total physical therapy expenses	\$
5. Total other expenses (describe) knee brace, MRI services, x-rays, lab, medical equipment	\$ 2,617.95
	Subtotal \$ 14,782.06

B. Documented lost wages and compensation to date

C. Documented property damages to date

D. Reasonably anticipated future medical and hospital expenses

E. Reasonably anticipated lost wages

F. Other documented items of damages (describe)

G. Brief description of plaintiff's injury, including nature and extent of injury (describe) Grade III tear of the ACL, torn medial meniscus and right knee requiring surgical repair.

\$
TOTAL \$ 14,782.06

CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

EXHIBITDATE: *7/7/05*

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Collette Brightman v. J.C. Penney, Inc.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730,
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
*Also complete AO 120 or AO 121
for patent, trademark or copyright
cases

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.

IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 50, 60,
690, 810, 861-865, 870, 871, 875, 900.

V. 150, 152, 153.

05 11718 RGS

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

None

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES _____ NO X

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES _____ NO X

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES _____ NO X

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES NO X

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES NO X

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Richard R. Eurich, Esq./Philip M. Hirshberg, Esq.

ADDRESS Morrison Mahoney, LP

250 Summer Street Boston, MA 02210

TELEPHONE NO. (617) 439-7500

(Cover sheet local.wpd - 11/27/00)

05-11718-RGS

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

COLLETTE BRIGHTMAN

(b) County of Residence of First Listed Plaintiff Bristol
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Stephen J. Amaral, Joseph J. Harrington, P.C., 190 William Street, New Bedford, MA 02740 (508) 996-6765

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF
<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRIISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ft) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | | |
|--|--|--|---|--|---|--|
| <input type="checkbox"/> 1 Original Proceeding | <input checked="" type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|--|--|--|---|--|---|--|

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332 (diversity)Brief description of cause:
Removal of plaintiff's personal injury action arising from alleged trip and fall at retail store.**VII. REQUESTED IN COMPLAINT:**

- | | | |
|--|-----------------|--|
| <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 | DEMAND \$ _____ | CHECK YES only if demanded in complaint:
JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
|--|-----------------|--|

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE 8/18/05 SIGNATURE OF ATTORNEY OF RECORD Richard R. Eust

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFFP _____ JUDGE _____ MAG. JUDGE _____